IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5120 OF 2003

Mr.Kishore Patil h/f Mr.P.N. Joshi for the Petitioner.

Mr.M.S. Karnik for Respondent.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005

P.C.:

Rule. Returnable forthwith. Heard finally by consent of parties.

1. By the order impugned the trial court has rejected the application filed by the petitioner for amendment in the plaint. The suit is for permanent injunction in relation to use of road. By the amendment application submitted by the Plaintiff, the Plaintiff was giving further details in relation to his right. There is no amendment

sought in the prayer clause of the plaint, but surprisingly the application has been rejected on the ground that by the amendment the nature of the suit is being changed. I fail to understand as to how without seeking amendment in the prayer clause of the plaint, the Plaintiff can change nature of the suit only by stating additional fact. The order impugned clearly suffers from non-application of mind.

2. In the result, therefore, the petition succeeds and is allowed. The order impugned is set aside. Application at Exh.40 on the record of Regular Civil Suit No.197/97 before the Civil Judge, Jr. Division, Nasik Road is allowed. Defendant is granted liberty to amend his written statement.

Rule made absolute accordingly, no order as to costs.

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